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EX PARTE

September 7, 2007

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: *In the Matter of Petition of Qwest for Forbearance Pursuant to
47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with
Respect to Broadband Services, WC Docket No. 06-125*

On August 29, 2007, COMPTEL filed a Notice of *Ex Parte* Meeting (“Notice”) in the above-captioned docket. In this Notice COMPTEL claimed that the pending Federal Communications Commission (“Commission”) docket on special access regulation and pricing “should mollify concerns of some ILECs [incumbent local exchange carriers] over regulatory ‘disparity’ with Verizon—as any new special access rules would necessarily apply to Verizon to the same degree that they applied to any other similarly-situated ILEC.” Notice at 1.

COMPTEL’s argument that the Commission can somehow conflate its rulemaking authority (as expressed in the Special Access docket) and its obligation to act in accordance with the strict time limitations of Section 10 of the Act under specified statutory guidelines and obligations is simply not correct. Qwest has made a showing that it is entitled to relief from certain Title II and *Computer II/III* requirements based on two distinct bases:

- Qwest has demonstrated that it has met the statutory requirements of Section 10(a) of the Act.¹
- Qwest has demonstrated that it is entitled, as a matter of law, to the same relief as was granted to Verizon by statutory grant on March 19, 2006.²

¹ 47 U.S.C. § 160(a).

² See March 20, 2006 press release, *Verizon Telephone Companies’ Petition for Forbearance from Title II and Computer Inquiry Rules with Respect to Their Broadband Services Is Granted By Operation of Law*, WC Docket No. 04-440.

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What is more, Qwest is entitled to a legally binding and public decision on its forbearance petition no later than September 11, 2007, or the petition will be deemed granted as an act of Congress under the statute.³

The fact that there is a pending rulemaking before the Commission that might address the same services (and ultimately some of the same regulations) as are at issue in the Qwest forbearance petition is not a relevant consideration in reviewing the Qwest forbearance petition. Section 10 forbearance provides a unique vehicle for eliminating regulations (including regulations expressly required by statute, such as the obligation of carriers to file tariffs) that cannot be overridden by other administrative tools that the Commission possesses. The D.C. Circuit Court of Appeals has already rejected a claim by the Commission that a forbearance petition could be denied because the issue was being dealt with in a rulemaking:

The Commission may or may not be right in what it surmises about the purported advantages of the Pricing Flexibility Order; but, at least for now, these surmises are beside the point. Congress has established § 10 as a viable and independent means of seeking forbearance. The Commission has no authority to sweep it away by mere reference to another, very different, regulatory mechanism.⁴

Qwest has a legal right to action on its forbearance petition under the standards of Section 10 of the Act. The existence of the Special Access docket is irrelevant to this right.

Respectfully submitted,

/s/ Robert B. McKenna

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³ 47 U.S.C. § 160(c).

⁴ *AT&T Corporation v. FCC*, 236 F.3d 729, 738 (D.C. Cir. 2001).